

Remarks

I. Introduction

Upon entry of the present amendment, claims 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, 66, and 77-81 will be pending in this application. Claims 77-81 have been added back in from the original patent, and they correspond to claims 1, 2, 9, 14, and 17, respectively.

Claims 1, 14, 56, and 66 have been amended to address the Examiner's indefiniteness rejections. Claim 35 has been amended to clarify that the superior, posterior, and inferior flanges extend from the cup body. Claim 56 has been amended to clarify that the containment lip extends distally from the inner concave surface. No new matter has been added. Based on the following remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

II. 35 U.S.C. § 112

The Examiner has rejected claims 1, 3-8, 10-12, 14-22, 56, 57, 59, 61, 63, and 66 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that in claim 1, line 18, "the *plastic* liner" lacks a proper antecedent basis; claims 7 and 12 do not appear to further limit claim 1 (at lines 15-18) or are confusing as to the scope; in claim 14, line 6, "the cup member" lacks proper antecedent basis; in claim 56, lines 9-10, "superior flange" being listed twice renders the claim indefinite and confusing; and in claim 66, line 11, "the securing member surface" lacks a proper antecedent basis.

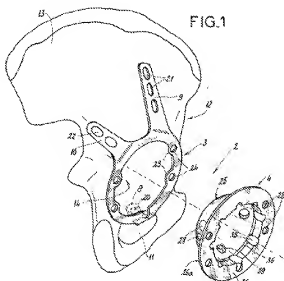
Appropriate correction to the claims has been made. However, with respect to the Examiner's objection to claim 12, Applicants submit that the specification discusses an annular reinforcement or boss 28 (see, e.g., col. 4, lines 27-37), which is shown clearly in Figure 5. Accordingly, to the extent that the Examiner submits that claim 12 remains confusing, explanation about what remains confusing is respectfully requested.

III. 35 U.S.C. § 102

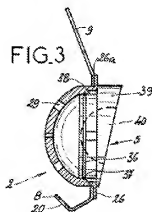
The Examiner has rejected claims 14, 17-23, and 25 under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 2660546 to Setiey et al. The Examiner states that Figure 3 illustrates a cup body 2 having an apex, a rim 26 extending about the periphery, curved flange portions 9 and 10, and an anti-luxation lip 39 defining a portion of a concave surface extending distally to a greater extent adjacent the flange portions 9 and 10 (English translation: page 6, last paragraph). Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *See* MPEP § 2131; *Verdegaal Bros. V. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). In this case, Setiey Figure 3 shows a titanium cup 4 and a polyethylene insert 5, and the insert is actually the structure having elements that the Examiner submits are contained by the cup. For example, the Setiey translation states that the cup is "hemispherical" and that "the opening of cup is prolonged by an annular edge 26" that is bent 90 degrees toward the outside. The Setiey cup, as shown in FIG. 1, has a flange (e.g., the flat hemispherical edge surface that extends radially away from the cup rim). There is no feature of the cup body

that extends *distally* to a greater extent adjacent the flange portion, as recited by rejected independent claims 14 and 23.



The portion to which the Examiner appears to be referring to as the claimed “portion of the concave surface of the cup body extending distally” is anti-luxation lip 39. However, anti-luxation lip 39 is a part of the insert 5, not the cup 4. The Setiey translations states that “An edge anti-luxation 39 is envisaged in insert 5.” This is not a part of the cup body.



At least for these reasons, independent claims 14 and 23 should not be found anticipated by Setiey, nor should the claims depend therefrom be anticipated. Accordingly, it is respectfully requested that the Examiner reconsider and withdraw this rejection.

IV. 35 U.S.C. § 103

A. Setiey et al.

The Examiner has also rejected claims 24, 26-31, 33-36, 38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, and 66 under 35 U.S.C. § 103(a) as being unpatentable over French Patent No. 2660596 to Setiey. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

1. Independent Claim 35

Regarding claim 35, the Examiner states that the inferior flange 8 having more than one opening 20 would have been obvious in order to enhance the anchorage and/or in order to accommodate a thinning or absence of bony support (English translation: page 2, lines 10-13) by directing the screw into another bone region. Without acquiescing to the Examiner's position on this point, Applicants respectfully submit that, as discussed above, what the Examiner has failed to point out is any feature in Setiey that shows or suggests "a portion of the inner concave surface of the cup body extending distally from the rim plane to a greater extent adjacent the superior and posterior flanges than at other portions around the rim of the cup body." The anti-luxation lip 39 of the insert (as shown in Setiey Figure 3) is not a part of the cup body 4. This is reflected clearly in Figure 1. It is a completely separate piece of the prosthesis. Moreover, lip 39 cannot be considered to be a concave surface of the cup body,

as claimed. In addition to it simply not being a part of cup body, lip also fails to exhibit any concavity; it extends in a linear fashion only.

Claim 35 has also been amended to clarify that the superior, posterior, and inferior flanges extend from the cup body. As shown in Setiey Figure 1, there is a separate ring 3 that includes the legs 9 and 10. They are not an element of the cup body as claimed. Accordingly, claim 35 is not made obvious by Setiey. Additionally, for at least for these reasons, claims that depend from claim 35 should also be considered non-obvious over Setiey, and Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

2. Independent Claim 47

Regarding claim 47, the Examiner states that the anti-luxation lip 39 is capable of partially containing bone cement against surrounding bone, whether or not such was the intent. Claim 47 recites “an extension of the cup body extending distally,” that the “extension extends to a greater extent adjacent the superior and posterior flanges than at other positions around the cup body,” and that “the extension is adapted to at least partially contain flow of securing material.” As discussed above, the Examiner points only to the anti-luxation lip 39 as meeting these claim limitations. First, the Setiey anti-luxation lip 39 is not a part of the cup body as claimed. It is a part of the insert. Second, it is shown and described as an *anti-luxation* lip, which means that it is a portion to prevent dislocation of the joint. There is no teaching or suggestion or reason why one of ordinary skill in the art would believe that this feature is adapted to at least partially contain flow of securing

material. In fact, one example of securing material is bone cement, and an anti-luxation lip on a liner would not be used to secure bone cement. It is used to prevent dislocation.

Accordingly, claim 47 is not made obvious by Setiey. Additionally, for at least for these reasons, claims that depend from claim 47 should also be considered non-obvious over Setiey, and Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

3. Independent Claim 56

Regarding claim 56, the Examiner states that the “containment lip” (claim 56, line 13) corresponds to the annular lip 26 of Setiey et al., with the “liner” (claim 56, line 17) being the insert 5 of Setiey et al. Without acquiescing to the Examiner’s position, Applicants have amended claim 56 to clarify that the “containment lip” extends “distally from the inner concave surface” a partial distance around the cup-shaped device. As shown in Fig. 1 of Setiey, the Setiey annular lip 26 does not extend distally from the inner concave surface; it surrounds the or rim edge of cup and extends radially outward.

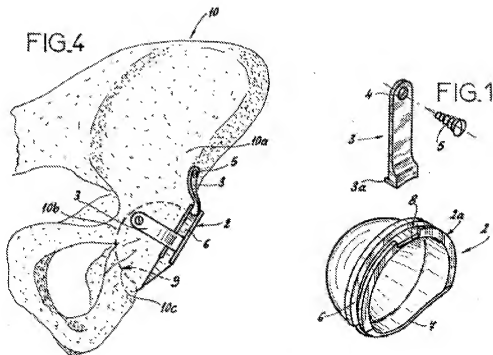
Accordingly, claim 56 as currently presented is not made obvious by Setiey. Additionally, for at least for these reasons, claims that depend from claim 56 should also be considered non-obvious over Setiey, and Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

B. Rambert et al.

The Examiner has also rejected claims 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, and 66 under 35 U.S.C. § 103(a) as being unpatentable over French Patent No. 2578162 to Rambert et al. The Examiner states that the drawings illustrate superior and

posterior flanges 3 and an inferior flange 18 and that to incorporate more than one opening into each of said flanges would have been obvious to the ordinary practitioner in order to provide more options to the surgeon for affixing the prosthesis to “firmer bone” (Derwent title). The Examiner further asserts that a plurality of openings in the cup 2 would have been an obvious variant on or supplement to the elements 23, 24, and 24a depicted in Figure 6 so as to enable the anchoring of bone screws into more viable bone for a particular patient. Although not shown, the Examiner also believes that a relatively thick liner (also quite common in the art) would have been immediately obvious, if not inherent, in order to provide an appropriate material for articulation with the femoral ball or head. A cement mantle for affixing the liner to the cup 2 would have been obvious to one of ordinary skill in order to adhere the liner to the smooth inner surface of the cup so as to provide for an even distribution of stress across the bearing interfaces of the acetabular components. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner has failed to point to any feature that can be considered the claimed “portion of the concave surface of the cup body wall extending distally to a greater extent adjacent the superior and posterior flanges than at other positions around the rim of the cup.” The only portion of Rambert that could arguably be characterized as such a portion of the concave surface is the body of the cup referenced by numeral 6.



However, this is not a portion of the concave surface. This portion extends linearly; there is no feature that is curved (or that can be considered a concave surface extending distally). As shown by the line of demarcation in Rambert FIG. 1, this is not a portion of the concave surface of the cup body, but a separate “peripheral throat 6,”

Accordingly, none of the rejected claims are made obvious by Rambert, and Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Conclusion

For at least the above reasons, Applicants respectfully request allowance of the pending claims and issuance of a patent containing these claims in due course. If the Examiner believes there are any issues that can be resolved via a telephone conference, or there are any informalities that can be corrected by an Examiner's amendment, please call Kristin Crall at 404.815.6147.

Respectfully submitted,

/Kristin M. Crall 46,895/

Kristin M. Crall
Reg. No. 46,895

KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia, 30309-4530
404.815.6147